IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MEMORIAL HERMANN HEALTHCARE SYSTEM AND MEMORIAL HERMANN HOSPITAL SYSTEM,	§	
Plaintiffs,	§	
	§	C.A. NO. ______________________
v.	§	
	§	JURY TRIAL DEMANDED
STEALTH, L.P., D/B/A HOUSTON TOWN & COUNTRY HOSPITAL AND WEST HOUSTON GP L.P.,	§	
Defendants.	§	

PLAINTIFFS' COMPLAINT

Plaintiffs Memorial Hermann Healthcare System and Memorial Hermann Hospital System (together, "MHHS") file this complaint against defendants Stealth, L.P., d/b/a Houston Town & Country Hospital and West Houston GP L.P. (together, "Stealth").

INTRODUCTION

1. MHHS seeks a declaration from this Court that its actions in competing against defendant Stealth for the provision of hospital services have been fully consistent with the competitive regime established, and indeed encouraged, by the antitrust laws. Such a declaration is necessary because Stealth -- which operated a hospital that went out of business last year and which has since been separately sued by a number of its limited partners for gross mismanagement of that hospital -- refuses to take responsibility for its own failures. Instead, Stealth falsely seeks to cast blame on MHHS. In particular,

Stealth wrongly claims that the hospital failed due to anticompetitive actions by MHHS, including the manner in which MHHS contracts with managed care companies. Accordingly, as more specifically described below, MHHS seeks this Court's declaration that the manner in which MHHS contracts with managed care companies and otherwise conducts its business comports with and does not violate the United States and Texas antitrust laws.

JURISDICTION AND VENUE

2. This is a civil action arising under federal and state law. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 15, 26 and 28 U.S.C. §§ 1331, 1337, 2201. This Court has supplemental jurisdiction over all state-law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 15 U.S.C. §§ 15, 22 and 28 U.S.C. § 1391. Stealth transacts business in the Southern District of Texas. Furthermore, the events and transactions complained of occurred throughout areas where Stealth does or did business, including the Southern District of Texas.

PARTIES

4. Plaintiff Memorial Hermann Healthcare System is a not-for-profit, community-owned healthcare system with its principal place of business in Houston, Harris County, Texas. Plaintiff Memorial Hermann Hospital System is the subsidiary corporation that owns and operates the hospitals that are part of Memorial Hermann Healthcare System.

5. Defendant Stealth, L.P. is a Delaware limited partnership with its principal place of business at 1120 Business Center Drive, Houston, Texas 77043. Stealth may be served by serving its registered agent for service of process, CT Corporation System, 1021 Main Street, Suite 1150, Houston, Texas 77002.

6. Defendant West Houston GP L.P. is a Tennessee limited partnership that does business in Texas and whose principal place of business has been at 1120 Business Center Drive, Houston, Texas 77043. West Houston GP may be served by serving its registered agent for service of process, CT Corporation System, 1021 Main Street, Suite 1150, Houston, Texas 77002.

BACKGROUND

7. MHHS operates 12 hospitals and numerous related facilities in the Harris County metropolitan area. MHHS has approximately 19,000 employees and provides top-quality medical care to patients from Texas and around the world.

8. Stealth is a limited partnership that was formed in 2003. Stealth's general partner is Defendant West Houston GP. In addition to its general partner, Stealth also has approximately 100 limited partners. Most of Stealth's limited partners are physicians who practice medicine in the Harris County metropolitan area.

9. Stealth was formed to develop and operate a privately-owned, for-profit hospital. In general terms, the development and construction of the hospital consisted of purchasing land in west Houston and constructing a hospital building and an adjacent medical office building. The hospital was named Houston Town & Country Hospital ("HTCH").

10. The development and construction of the project was financed by a real estate investment trust called Medical Properties Trust, Inc. ("MPT"). Once the project was completed, MPT leased the hospital building and the adjacent medical office building to Stealth. Stealth opened HTCH in November 2005.

11. HTCH was one of many for-profit hospitals established in recent years by joint ventures among physicians or by physicians and venture capital firms. The for-profit joint venture model, however, has been criticized on multiple grounds.

12. The joint venture model is susceptible to severe conflicts of interest. The joint venture model creates incentives for physician-investors both (a) to refer patients to hospitals in which the physician-investor has an economic interest, and (b) to over-utilize hospital services. This concern creates a powerful economic disincentive for health insurers to contract with joint-venture hospitals.

13. Physician-owned joint venture hospitals such as HTCH also cherry-pick the most lucrative patients to admit and treat, including insured patients, while eschewing admission of uninsured and under-insured patients, as well as high-risk patients. These types of hospitals have no obligations to provide any charity care, and they typically minimize emergency room service and "slough off" to other hospitals the uninsured, under-insured, and high-risk patients. This practice, of course, substantially increases the amount of uncompensated care that must be provided by the emergency rooms and the other facilities of not-for-profit, community hospitals such as those owned by MHHS while depriving the community hospitals of the revenues insured patients would have provided had the physician owners not admitted them to their own facilities.

14. Physician-owned joint venture hospitals also drive up the costs of health care by inflating demand for expensive elective surgeries. This concern creates yet another economic disincentive for health insurers to contract with joint venture hospitals.

15. These concerns so troubled Congress that in 2003, it placed a moratorium on enrolling physician-owned hospitals in Medicare and Medicaid.

16. Not surprisingly, Stealth was never successful financially. During mid-summer 2006, Stealth became unable to pay its financial obligations in the ordinary course of its business operations. Stealth subsequently defaulted on its obligations and ceased operating HTCH.

17. In October 2006, MPT (HTCH's landlord) terminated the lease agreements with Stealth. Though a special purpose subsidiary, MPT continued the operations of HTCH for several months. MPT subsequently agreed to sell to MHHS the hospital building, the medical office building, and the land on which the buildings were located. The sale to MHHS closed in January 2007.

18. Even prior to its closing, Stealth refused to accept responsibility for its failure to become a financially viable venture. For instance, in April 2006 Stealth began complaining (wrongly) that MHHS had engaged in anticompetitive conduct by allegedly interfering with contract negotiations between Stealth and various health insurers. Stealth also falsely claimed that MHHS objected to certain health insurers' contracting with Stealth and alleged that MHHS suggested to certain health insurers that contracting with Stealth would impair the health insurer's commercial relations with MHHS.

19. Stealth's unfounded complaints have continued beyond the date on which it ceased to function as an ongoing business enterprise. Indeed, in late 2006, Stealth was sued by a group of its limited partners in a lawsuit styled *Franco, et al. v. West Houston GP, L.P., et al.*, No. 2006-79945 (61^{st} Judicial District Court of Harris County, Texas). The plaintiffs in the *Franco* lawsuit contend that the business failed due to gross mismanagement, self-dealing, and other illegal conduct by Stealth and its management.

20. Stealth has not sued MHHS in the *Franco* lawsuit. However, in defending the very serious allegations made against it in the *Franco* lawsuit, Stealth contends in its answer that it was put out of business due to anticompetitive conduct by MHHS and alleges that MHHS "has engaged in economic warfare designed to crush legitimate competition from physician-owned hospitals in the greater Houston area…." Stealth also claims in its answer in that case that MHHS "applied commercial pressure on health insurers not to contact with the [Houston Town & Country] Hospital and organized a boycott of the Hospital by the major health insurers."

21. Stealth's irresponsible allegations of unlawful and anticompetitive conduct by MHHS have necessitated the filing of this Complaint for declaratory relief. As set forth in more detail below, MHHS seeks this Court's declaration that MHHS has not violated the United States or Texas antitrust laws.

REQUEST FOR DECLARATORY JUDGMENT

22. Pursuant to 28 U.S.C. § 2201, MHHS seeks a declaratory judgment for the purpose of determining questions of actual controversy between MHHS and Stealth. Specifically, MHHS seeks a declaration that it has not violated the United States or Texas

antitrust laws as alleged by Stealth. The requirements for jurisdiction under the Federal Declaratory Judgment Act are satisfied in this case.

23. There is an independent basis for subject matter jurisdiction in this matter. Based on its allegations in the *Franco* lawsuit, Stealth has standing to bring a private antitrust action for alleged violations of section 1 of the Sherman Act, 15 U.S.C. § 1, and section 15.05 of the Texas Free Enterprise and Antitrust Act of 1983, TEX. BUS. & COMM. CODE ("TFEAA"). Even though it would be without merit, this Court would have subject matter jurisdiction over such a claim.

24. There is an actual controversy between Stealth and MHHS. Stealth blames its demise on allegedly anticompetitive conduct by MHHS and is currently engaged in other litigation related to HTCH's failure. Stealth has served MHHS with discovery materials in the *Franco* lawsuit in a transparent effort to prepare for a federal or state antitrust claim against MHHS. The threat of litigation by HTCH is real and substantial, and it is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. The totality of the circumstances indicates that an actual controversy is present.

25. MHHS seeks a declaration of the rights and legal relations between the parties, including a declaratory judgment that it has at all relevant times conducted its business and engaged in contracting practices with health insurers in full and complete compliance with the United States and Texas antitrust laws, including section 1 of the Sherman Act and section 15.05(a) of the TFEAA. Additionally, MHHS seeks this Court's declaratory judgment establishing the following:

(a) MHHS is free to enter into contracts, including contracts that may be characterized as exclusive or semi-exclusive dealings arrangements, with health insurers, even if the effect of such contracts is to preclude Stealth from contracting with one or more health insurers;

(b) The manner in which MHHS contracts with health insurers has not resulted in a horizontal group boycott or concerted refusal to deal that violates the Sherman Act or the TFEAA or that has caused injury to Stealth's business or property or to competition;

(c) The manner in which MHHS contracts with health insurers did not result in a direct or indirect agreement between or among two or more health insurers that none of them would deal with Stealth or proximately cause injury to Stealth's business or property; and

(d) The manner in which MHHS contracts with health insurers comports with and does not violate the United States and Texas antitrust laws.

CONCLUSION AND PRAYER

26. In view of the foregoing, MHHS prays that the Court enter a declaratory judgment as requested herein, award MHHS the costs of this action, and grant MHHS such other and further relief as may appear to this Court just, right and proper.

Respectfully submitted,

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